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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,235	12/16/2003	Jody Lynn Hoying	9456	6351

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER

JOHNSON, JENNA LEIGH

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/737,235

Applicant(s)

HOYING, JODY LYNN

Examiner

Jenna-Leigh Johnson

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3-13, 15, 20 and 21 is/are allowed.
- 6) ☒ Claim(s) 14 and 17-19 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The response submitted on February 24, 2009, has been entered. Claims 1 and 3 - 21 are pending.

Terminal Disclaimer

2. The terminal disclaimer filed on February 24, 2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Applications 10/737,306, 10/737640, 11/156,020, 11/158,165, 11/650,821 and US Patents 7,172,801 and 7,410,683 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102/103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 14, 17, 18, and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mende (5,180,620).

The features of Mende have been set forth in the previous Office Action. Mende teaches that the fabric layer can be treated either with a hydrophobic or hydrophilic treatment to modify the surface properties of the layer as desired (column 9, lines 40 - 45 and column 16, lines 5 - 10). Thus, Mende teaches that the base layer can be treated to be a highly hydrophobic material. The highly hydrophobic layers would inherently be relatively hydrophobic as compared to the film layer. However, in the alternative, Mende teaches that the fabric layer can be treated to have any desired level of hydrophobic or hydrophilic properties. Further, it is well known that controlling the hydrophobic or hydrophilic nature of materials allows one to control wicking properties, or liquid and moisture movement through a material. Particularly, a hydrophobic material used near a surface of an absorbent product can help to pull moisture away from the surface and into a more hydrophilic region of an absorbent product. Thus, it would have been obvious to one having ordinary skill in the art to use a fibrous layer that is relatively hydrophobic to the second layer to help pull moisture

away from the surface of the absorbent product and into the more hydrophilic layers of the absorbent product. Thus, claims 14 and 17 are rejected.

Claim 18 is also rejected since Figures 30 and 31 shows that the polymeric film layer 2b includes apertures.

Also, Figure 31 shows that the nonwoven web layer extends into the film layer, but does not pass through the film layer. Therefore, claim 19 is also rejected.

Allowable Subject Matter

5. Claims 1, 3 - 13, 15, 20 and 21 are allowed.

6. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is an examiner's statement of reasons for allowance:

8. Claims 1, 3 - 13, 15, 20, and 21 are allowed since the prior art fails to teach using a composite web comprising a first layer adjacent to a second layer, wherein the first layer comprises randomly oriented fibers and a plurality of discrete regions on the body-facing side of the layer, fibers reoriented in a direction orthogonal to the MD-CD plane of the web and extending toward the garment-facing side of the second layer, and the composite web is placed between a topsheet and a backsheet of an absorbent article. While the prior art teaches multi-layer structures wherein one layer includes a plurality of regions projecting in a direction orthogonal to the MD-CD plane of the web, the prior art fails to teach or suggest that it would be desired to use this structure as a layer between the topsheet and backsheet of an absorbent article.

9. Claim 16 is indicated as having allowable subject matter since the prior art fails to teach or fairly suggest a composite web comprising a first layer and a second layer disposed in a face to face relationship to each other, wherein the first layer is relatively hydrophobic compared to the second layer, and the first layer comprises a plurality of discrete regions on the body-facing side of the layer, fibers reoriented in a direction orthogonal to the MD-CD plane of the web and extending toward the garment-facing side of the second layer, and the reoriented portions of the fibers have an average fiber diameter that is less than the average

fiber diameter of the remaining fibers in the first fibrous layers, And wherein both the first and second layers are fibrous layers. While the prior art discloses composite structures include projections with fibers oriented and projecting from a first fibrous layer, the prior art is either drawn to composites which are specifically film and fiber composite structure, do not include layers of different materials which would include a layer which is relatively hydrophobic first layer, or use a process that would stretch the reoriented fibers to create a final product with a smaller average fiber diameter in the reoriented regions. Therefore, the combination of elements recited in claim 16 is considered to be allowable subject matter.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

10. Applicant's arguments filed February 24, 2009 have been fully considered but they are not persuasive. The applicant argues that the teachings of Mende do not specifically state anything with regards to the relative comparison between of the hydrophobicity of the first and second layers of the composite structure (response, pages 2 - 3). However, with regards to the claimed properties, it has been held that as long as there is evidence of record establishing inherency, failure of those skilled in the art to contemporaneously recognize an inherent property, function or ingredient of a prior art reference does not preclude a finding of anticipation. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1349, 51 USPQ2d 1943, 1948 (Fed. Cir. 1999). Further, it is noted that when the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Thus, the prior art does not need to specifically recite the relationship if it would be inherent to the product taught by the prior art. In this instance, the two layered embodiment described by Mende is embodiment 3 (column 14 - column 16). In this embodiment, Mende teaches that the nonwoven layer may be treated either hydrophilically or

hydrophobically as desired. Thus, it would include highly hydrophobic treatments that would make the cloth layer relatively hydrophobic when compared to the film layer. Therefore, the rejection is maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Johnson whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlj
May 5, 2009

/Jenna-Leigh Johnson/
Primary Examiner, Art Unit 1794